

DEPARTMENT OF TAXATION AND FINANCE
BOARD OF CONFERESSES - CORPORATION TAX BUREAU

In the Matter of Applications
and Claim for Revision

of

KAYSER-ROTH CORPORATION

Hearing Case No. 6376

for revision or refund of franchise
taxes under Article 9A of the Tax
Law for the fiscal year June 30,
1960 through the fiscal year June 30,
1965.

Based on a New York field audit report, the following taxes were
re-audited and restated on February 13, 1967:

	<u>6/30/60</u>	<u>6/30/61</u>	<u>6/30/62</u>
Business Income	\$4,711,660.59	\$2,847,961.94	\$3,589,576.00
Business allocation	16.9738%	17.7793%	16.9818%
New York Base	799,747.85	506,347.70	609,575.00
Tax at 5½%	43,986.13	27,849.12	33,527.00
Plus Subsidiary Cap. Tax	1,853.04	2,737.64	1,034.00
Total	\$ 45,839.17	\$ 30,586.76	\$ 34,561.00

	<u>6/30/63</u>	<u>6/30/64</u>	<u>6/30/65</u>
Business Income	\$4,984,213.00	\$4,889,283.00	\$7,342,757.00
Business allocation	18.8448%	14.7215%	15.2622%
New York Base	784,034.00	721,248.00	1,120,666.00
Investment Income	430,877.00	- - -	- - -
Investment allocation	07.2885%		
New York Base	31,318.00		
Total allocated income	815,352.00	721,248.00	1,120,666.00
Tax at 5½%	44,844.00	39,669.00	61,637.00
Plus Subsidiary Cap. Tax	1,287.00	3,085.00	3,556.00
Total	\$ 46,131.00	\$ 42,754.00	\$ 65,193.00

Timely applications were filed on July 13, 1967.

The field audit report reads, in part, as follows:

"The issue in question concerns whether the taxpayer ships its
lingerie from a regular place of business or from a permanent and
continuous place of business.

"Taxpayer leases a plant and warehouse in Haleyville, Alabama,
which is sub-let to Haleyville Textile Mills, Inc., a subsidiary.
The lingerie products are manufactured by Haleyville Textile
Mills, Inc. and two minor subsidiaries and then stored at the
subsidiary's warehouse located in Haleyville, Alabama, until
shipped to customers in behalf of the taxpayer.

"Taxpayer has two employees at Haleyville, Alabama, who are
also on the payroll of the subsidiary corporation in the capacity
of general manager and comptroller of the subsidiary. Taxpayer
pays only a part of their salaries with the greater portion
being paid by the subsidiary.

"Taxpayer does not pay any maintenance expenses of the plant or warehouse, and inasmuch as it sub-lets the plant and warehouse to its subsidiary, does not have any rent expense. Taxpayer does not pay any franchise tax or property tax to the State of Alabama.

"In view of the foregoing, it is the opinion of the examiner that the premises located at Haleyville, Alabama, is a regular place of business of the taxpayer. Taxpayer does not maintain, use or occupy these premises in carrying on its business through its regular employees regularly in attendance.

"Taxpayer in its letter of disagreement, states "that all expenses incurred in the maintenance and operation of the warehouse are paid by the taxpayer". These expenses are incurred by the subsidiary and is a reimbursement to the subsidiary by the taxpayer for services rendered in the manufacture and shipment of lingerie by the subsidiary to the taxpayer's customers."

"Taxpayer treated lingerie sales as shipments from permanent and continuous places of business for all years involved. Examiner has considered these sales as originating from regular places of business where orders were received or accepted through the New York office and allocated 100% of these receipts to New York in the fiscal years 6/30/60 and 6/30/61 and allocated 100% to New York those receipts which were shipped into New York and 50% to New York those receipts which were shipped outside New York for the fiscal years ended 6/30/62 through 6/30/63 inclusive. Receipts into New York for 6/30/62 has been allocated 100% to New York by the taxpayer."

To resolve the issue and arrive at an equitable result, the Board recommends that the taxpayer and its subsidiary, Haleyville Textile Mills, Inc. be taxed on a combined basis as they meet the requirements of Section 5.28 of Ruling of State Tax Commission.

The combined taxes are as follows:

	<u>6/30/60</u>	<u>6/30/61</u>	<u>6/30/62</u>
Combined Business Income	\$4,756,335.00	\$2,889,732.00	\$3,621,762.00
Business allocation	12.0249%	12.5472%	14.3532%
New York Base	571,945.00	362,580.00	519,838.00
Tax at 5 1/2%	31,457.00	19,942.00	28,591.00
Plus Subsidiary Cap. Tax	1,853.00	2,738.00	1,034.00
Total	33,310.00	22,680.00	29,625.00
Prior tax	45,839.17	30,586.76	34,561.00
Reduction	\$ 12,529.17	\$ 7,906.76	\$ 4,936.00
	<u>6/30/63</u>	<u>6/30/64</u>	<u>6/30/65</u>
Combined Business Income	\$5,027,290.00	\$4,966,135.00	\$7,404,413.00
Business allocation	13.1662%	12.2034%	12.6374%
New York base	661,903.00	606,037.00	935,725.00
Combined Investment Income	430,877.00	- - -	- - -
Investment allocation	07.2689%	- - -	- - -
New York base	31,318.00	- - -	- - -
Total allocated income	693,221.00	606,037.00	935,725.00

	<u>6/30/63</u>	<u>6/30/64</u>	<u>6/30/65</u>
Tax at 5 1/2%	38,127.00	33,332.00	31,465.00
Plus subsidiary cap. tax	1,287.00	3,085.00	3,554.00
Total	39,414.00	36,417.00	35,021.00
Prior tax	46,131.00	42,754.00	65,193.00
Reduction	\$ 6,717.00	\$ 6,337.00	\$ 10,172.00

/s/ W. F. SULLIVAN
Chairman

/s/ D. H. GILHOOLY

/s/ J. J. GENEVICH

WFS:MB
11/6/67

Approved
E. A. DORAN

APPROVED: WAETER MACLYN CONLON 16 NOV. '67